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Michael J. Masterson

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STOEL RIVES LLP

900 SW FIFTH AVENUE

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EXAMINER

ARK, DARREN W

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,905	Applicant(s) MASTERSON, MICHAEL J.	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/29/04, 3/4/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. No claims are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 04/23/2008. The Examiner agrees with the arguments presented in the election filed on 04/23/2008 with respect to the inclusion of claims 23-29 of Group II.

Specification

2. The disclosure is objected to because of the following informalities:

Col. 4, line 50, the number "12" should be changed to --14-- to properly denote the main cavity.

Col. 4, line 51, the number "12'" should be changed to --14'-- to properly denote the laterally extending portion of the main cavity.

Col. 4, line 57, the number "12'" should be changed to --14'-- to properly denote the laterally extending portion of the main cavity.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 12, 13, 23-37, 80, 81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 12, the phrase “a first coupling for anchoring one end to the bait element to the body” renders the claim vague and indefinite since the first occurrence of “to” does not correctly claim the relation between the bait element and body. It should be changed to “of”.

In regard to claim 12, the phrase “a second coupling for connecting an opposite end of the bait element” renders the claim vague and indefinite since it is unclear as to what structure the opposite end of the bait element is being connected.

In regard to claim 23, the phrase “providing a passageway...from the soil toward the material” renders the claim vague and indefinite since there has been no positive recitation of a step of placing the desired invention in the soil.

In regard to claim 29, the phrase “the body an elongate shape in a direction transverse to the direction in which the device is oriented in the soil” renders the claim vague and indefinite since the direction in which the desired invention is oriented in the soil appears to be parallel to the longitudinal axis of the device and hence the direction in which the shape is elongated.

In regard to claim 30, the phrase “the sidewall is tapered from a wide end distal to and a narrow end...” renders the claim vague and indefinite since it is unclear what other structure the wide end is distal to.

In regard to claims 80 and 81, the phrases “a passageway is disposed through at least a portion of the body from the soil toward the material” and “a passageway disposed...from the soil toward the material” render the claims vague and indefinite since the soil has not been positively recited as part of the desired invention. The phrases should be rewritten such that the relationship between the desired invention and the soil is claimed in a functional manner.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 9, 12-18, 23-26, 28-32, 35, 36, 38, 39, 42-48, 62-65, 68, 70-75, 78, 80, 81 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Burgess 3,564,750.

In regard to claims 1 and 3, Burgess discloses a body (1, 2 or 12); a test element (7, 9, 10) supported relative to the body (9 received within slot in 12); means for controllably exposing the test element to the environment (slot in 12); means for applying a load force (5) to the test element (7, 9, 10); and a flag member (6) movably

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supported relative to the body (12) and coupled to the test element (via 7, 8) for movement in projecting relation to the body (when 8 is severed, then 6 is free from 12).

In regard to claims 2, 4, and 17, Burgess discloses the body having a cavity (open area within 1, 2 or slot in 12), a sidewall of the body (bottom side of 1, 2 comprising 11) having an opening (defined in 11 for receiving 12 therein) and an entrance passage (defined in 11).

In regard to claim 9, Burgess discloses the entrance passage (intermediate portion of passage defined in 11) extending between a first opening in an outwardly facing surface of the side wall (at bottom of 11) and a second opening in an inwardly facing surface of the side wall (at top of 12), the first opening having a first area and the second opening having a second area being less than the first area (opening at bottom of 11 is larger than opening at top of 12 as shown in the Figure), the passage smoothly tapering between the first and second areas (see 12 tapering at corners; taper not being particularly claimed).

In regard to claim 12, Burgess discloses the means for applying a load force comprising a first coupling for anchoring one end of the bait element (10 and lower portion of 12 receiving lower end of 9) to the body (12), a second coupling (7) for connecting an opposite end of the bait material (7 is closer to the top end of 9), and a spring (5) for applying tensile load to the bait element (7, 9, 10) through the second coupling.

In regard to claim 13, Burgess discloses the flag member (6) connected to the second coupling (7).

In regard to claims 14-16, Burgess discloses the bait element having a bait substance applied thereto (10 is made of wood or other material with a cellulose content, wherein cardboard has cellulose content).

In regard to claims 18, 35, and 42, Burgess discloses the barrier which is porous (part of 11 adjacent 12 is made of cellulose which is porous).

In regard to claim 23, Burgess discloses applying a force to the material (7, 9, 10); providing a passageway (defined by 12) through at least a portion of the body from the soil toward the material, wherein the passageway is enclosed by one or more sidewalls (12), the passageway being tapered from a wide end (12 is wider at the lower end where it has right angle corners) proximate to the soil to a narrow end (12 is narrower at the upper end where its corners are beveled at 45 degree angles) proximate to the material (adjacent 7, 9, 10); and signaling the weakening of the material (via 8 or the sound of 6 impacting 3).

In regard to claim 27, Burgess discloses the signaling step comprising ejecting at least a portion of a flag (7 or 6 or 8; flag not being particularly claimed) from the body (12).

In regard to claim 28, Burgess discloses providing an outer housing (1, 2, 11) around the body (12), the outer housing having an opening (between 11).

In regard to claim 30, Burgess discloses a body having an outer wall (1, 2); a material (7, 9, 10); an opening in the wall (defined in 11); a passage (slot in 12 to receive 9) in the body extending at least partially between the opening and the material (7, 9, 10), the passage having a sidewall enclosing the passage (12 encloses the

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passage), wherein the sidewall is tapered from a wide end (12 is wider at the lower end where it has right angle corners) distal the material (7, 9, 10) to a narrow end (12 is narrower at the upper end where its corners are beveled at 45 degree angles) proximate the material; and a spring (5) in tension with the material (7, 9, 10) so as to apply a force to the material.

In regard to claims 32, 39, 65, and 75, Burgess discloses a barrier (part of 11 adjacent 12 or wires X, Y extending from 8 to electrically operated signal device are located between 1, 2 and 7, 9, 10; barrier not being particularly disclosed) disposed between the outer wall (1, 2) and the material (7, 9, 10).

In regard to claim 36, Burgess discloses a flag (6).

In regard to claim 38, Burgess discloses a body housing having an outer wall (1, 2); a body core (12); a material (7, 9, 10); an opening through the outer wall of the body housing (between 11); and a spring (5).

In regard to claim 45, Burgess discloses a passage (slot in 12) formed on the body core and extending at least partially between the opening (defined by 11) and the material (7, 9, 10), the passage having a sidewall (12).

In regard to claim 46, Burgess discloses the sidewall is tapered from a wide end (12 is wider at the lower end where it has right angle corners) distal the material (7, 9, 10) to a narrow end (12 is narrower at the upper end where its corners are beveled at 45 degree angles) proximate the material.

In regard to claim 62, Burgess discloses a body having an exterior wall (1, 2); an opening in the exterior wall of the body (defined in 11); a cavity within the body (slot in

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12); an opening in the interior wall of the cavity (top of slot in 12); a material (7, 9, 10); a spring (5).

In regard to claims 63 and 73, Burgess discloses a passage (intermediate portion of slot in 12) in the body extending at least partially between the opening in the exterior wall (in 11) and the opening in the interior wall of the cavity (top of slot in 12).

In regard to claims 68 and 78, Burgess discloses a flag (6) coupled to the spring (5), the flag moving in projecting relation to the body (6 moves and projects within 1, 2; exterior projection of the flag is not being particularly claimed).

In regard to claim 70, Burgess discloses a cavity within the body near the top end of the body (open area inside 1, 2 for receiving 6).

In regard to claim 72, Burgess discloses a second cavity (slot in 12) within the body containing the material (7, 9, 10), the second cavity having an interior wall (12) and an opening (slot in 12).

In regard to claims 80 and 81, Burgess discloses a spring mechanism (5); a passageway (defined by 11, 12) having a larger opening proximate to the soil (space defined in 11 for receiving 12) relative to a narrower opening (top portion of slot in 12) proximate the material (7, 9, 10); and means for signaling (when 8 is severed and thereby generates a signal at electrically-operated signal device such as a lamp or via 6 impacting 3; means for signaling not being particularly claimed).

7. Claims 1-4, 9, 12-14, 17, 23-27, 29-31, 36, 37 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Volk et al. 5,988,102.

Volk et al. discloses a body (11); a test element (37-40, 59) comprising a test material (59); means for controllably exposing the test element (sidewall of 11 abutting meat when inserted therein) to the hazardous environment (cooking apparatus which generates high heat); means for applying a load force to the test element (55), the load force being effective for displacing a portion of the test element when there is a predetermined amount of weakening of the test element (when 59 softens at a predetermined elevated temperature); a flag member (45-49) movably supported relative to the body (see Fig. 2) and coupled to the test element (via 37-40) for movement in projecting relation to the body when the test element is weakened to the predetermined amount (softening of 59).

In regard to claims 2 and 4, Volk et al. discloses the body (11) having a cavity (19), a sidewall (of 11) having an opening (20; opening not being claimed such that it extends transversely through the wall or relative to the axis of the body) and an entrance passage (19).

In regard to claim 3 and the term “consumable structural material”, Volk et al. discloses that the material (59) can be organic (see col. 5, lines 63-end & col. 6, lines 1-2).

In regard to claim 9, Volk et al. discloses the entrance passage (19) extending between a first opening (20) with a first area and a second opening (portion between 25 & 21) with a second area, the second area being less than the first area (20 is larger in diameter than 25-21), the passage smoothly tapering between the first and second areas (see Figs. 1, 2; the taper is not being claimed as having a constant slope value).

In regard to claim 12, Volk et al. discloses the means for applying a load forcing comprising a first coupling (24) for anchoring one end to the bait element to the body, a second coupling (46) for connecting an opposite end of the bait element, and a spring (55) for applying tensile load to the bait element through the second coupling.

In regard to claim 13, Volk et al. discloses the flag member (47-49) connected to the second coupling (46).

In regard to claim 14, Volk et al. discloses a bait substance (59 is organic; bait substance not being particularly claimed) applied to the bait element (37-40, 44).

In regard to claim 17, Volk et al. discloses providing a housing body with a cavity (19) and a side wall passage (20); anchoring one end of the bait member (37-40, 44) to the body (via 25-21 and connection to 59); connecting a flag member (47-49) to an opposite end of the bait member (46) with the flag member extending proximate to a flag opening of the body (defined within 13); connecting a spring member (55) between the flag member (at 46) and the housing body (at 33); placing the body in a medium subject to infestation (meat is subject to infestation) by the organisms (organisms capable of reaching organic fusible material 59 will degrade the fusible material; actions of the organisms cannot be positively recited since their actions are part of nature).

In regard to claim 23, Volk et al. disclose applying a force to the material (59, 37-40 are acted upon by 55; this method claim does not positively recite a step of placing the body in the soil); providing a passageway through at least a portion of the body (20 leads to 19) towards the material (59, 37-40), wherein the passageway is enclosed by one or more sidewalls (11), the passageway being tapered from a wide end (20) to a

narrow end proximate to the material (33, 25, 27, 24, 21; see Figs. 1, 2); signaling the weakening of the material (via 47-49).

In regard to claims 27 and 37, Volk et al. discloses an annular shaped skirt (13).

In regard to claim 30, Volk et al. discloses a body (11) with an outer wall; a material consumable by the organism (59 is organic); an opening in the wall (20); a passage (19) extending between the opening (20) and the material (59), the passage is enclosed by a sidewall which is tapered from a wide end (at 23) to a narrow end (25-21); and a spring (55).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 4-8, 14, 16-18, 27, 32-35, 37, 39-44, 49-57, 60, 65-67, 69, 75-77, 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Su 6,397,516.

Alternatively in regard to claims 2, 4, and 17, Burgess discloses the body having a cavity (slot in 12) for enclosing the test element (7, 9, 10), but does not disclose a side wall of the body having an opening therein for communicating with the hazardous environment. Su discloses a side wall of the body (openings in station housing in Fig. 2B or casing of cellulose-containing material on bait tube in Fig. 3 comprising

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appropriate openings) having an opening (appropriate openings) therein for communicating with the hazardous environment (soil). It would have been obvious to one of ordinary skill in the art to modify the side wall of the body of Burgess such that it has an opening therein for communicating with the hazardous environment in view of Su in order to accommodate the horizontal tunneling habits of the organisms and to provide means for guiding the organisms directly to the bait element to facilitate and speed up detection for the user.

Alternatively in regard to claims 14 and 16, Burgess does not disclose the bait element having a bait substance applied thereto or the bait element being a cardboard member. Su discloses a monitoring device which is modified chemically to increase the possibility that the target pest will enter and move within the device by employing food, moisture, dry rot fungus, and pheromones or other mimics. Su also discloses that the material used to package the monitoring mixture can be a cellulose-containing material such as cardboard that is palatable to termites (see col. 14, lines 23-30). It would have been obvious to a person of ordinary skill in the art to modify the bait element of Burgess such that it has a bait substance applied thereto and is a cardboard member in view of Su in order to provide means for making the bait element more attractive and also to provide a bait element which is a common off the shelf item which is readily available.

Alternatively in regard to claims 5, 6, 18, 32-35, 39-44, 54-57, 65-67, and 75-77, Burgess does not disclose the barrier disposed between the outer wall and the material or the barrier comprising perforations or being porous. Su discloses a barrier (casing on

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bait tube in Fig. 3 comprising appropriate openings) disposed between the outer wall (station housing in Fig. 2B) and the material (non-rigid matrix comprising cellulose containing materials), the barrier comprising perforations (casing comprising appropriate openings; see col. 11, lines 6-10) and being both porous (appropriate openings) and consumable by the organism (cardboard and other cellulose materials; see col. 11, lines 16-23). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that there is a barrier disposed between the outer wall and the material and the barrier comprising perforations and being porous in view of Su in order to provide means for maintaining the integrity of the bait and to further shield the bait material from degradation due to the decomposition that occurs in moist soil to thereby preserve the bait material so that it is primarily eaten and degraded by the organisms so that the user is reliably assured that the device detects weakening of the material due to the actions of the organisms.

In regard to claims 27, 37, 49, 61, 69, and 79, Burgess does not disclose an annular shaped skirt around the body near the end of the body distal from the soil. Su and Woodruff disclose an annular shaped skirt (cover as discussed at col. 15, lines 21-53 OR 19) around the body (station housing OR 1) near the end of the body distal from the soil (top end of station housing OR 12, 13). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that it has an annular shaped skirt around the body near the end of the body distal from the soil in view of Su in order to provide means for protecting the integrity of the bait material therein, prevent

tampering but unauthorized individuals, and for reducing the effect of above ground elements on the bait material.

In regard to claim 50, Burgess discloses a body housing (1, 2) with an outer wall comprising an opening (defined by 11) and a body core (12) comprising a passage (slot in 12) which extends across the width of the outer housing and a front face of the which overlapping the opening (slot of 12 overlaps opening defined in 11), but does not disclose the body core comprising a radial passage. Su discloses a body (station housing) comprising a radial passage (openings in the station housing and bait tube). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it comprises a radial passage in view of Su in order to accommodate the horizontal tunneling habits of the organisms and to provide means for guiding the organisms directly to the bait element to facilitate and speed up detection for the user.

In regard to claim 60, Burgess discloses a flag (6) coupled to the spring (5), the flag moving in projecting relation to the body (6 moves and projects within 1, 2; exterior projection of the flag is not being particularly claimed).

10. Claims 58, 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Su 6,397,516 as applied to claim 50 above, and further in view of Woodruff 5,901,496.

Burgess and Su do not disclose the passage with a sidewall that is tapered from a wide end distal from the bait material to a narrow end proximate to the bait material. Woodruff discloses the passage (8) tapered from a wide end (outer end of 8 in Fig. 1) distal from the bait material (10) and a narrow end (inner end of 8) proximate the bait

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material (10), and wherein the sidewall is tapered linearly (see Fig. 1). It would have been obvious to one of ordinary skill in the art to modify the radial passage of Burgess and Su such that it has a sidewall that is tapered from a wide end distal from the bait material to a narrow end proximate to the bait material in view of Woodruff in order to funnel the organisms toward the bait material so as to guide the organisms to the bait material and thus expedite detection of the termites when present.

11. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Su 6,397,516 and Woodruff 5,901,496.

Burgess does not disclose a sidewall of the body having vertically spaced plurality of entrance passages or a consumable porous barrier. Su discloses the body (bait tube or station housing) having vertically spaced plurality of entrance passages (see Figs. 2B, 3) and a consumable porous barrier (casing on bait tube in Fig. 3 comprising appropriate openings). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it has vertically spaced plurality of entrance passages and a consumable porous barrier in view of Su in order to provide many entrances which are oriented in a horizontal direction which is conducive for the organisms to gain access to the bait material and also to provide means for preserving the integrity of the bait material while further attracting the organisms thereto. Burgess and Su do not disclose the entrance passages having second areas being less than first areas. Woodruff discloses entrance passages with second areas (inner ends of 8) being less than first areas (outer ends of 8). It would have been obvious to one of ordinary skill in the art to modify the entrance passages of Burgess and Su such that

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they have second areas being less than first areas in view of Woodruff in order to provide means for funneling the insects from afar toward the bait material so as to expedite detection of termites for the user.

12. Claims 2, 4, 10, 11, 17, 27, 37, 49-61, 69, 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Woodruff 5,901,496.

In regard to claims 27, 37, 49, 61, 69, and 79, Burgess does not disclose an annular shaped skirt around the body near the end of the body distal from the soil. Woodruff disclose an annular shaped skirt (19) around the body (station housing OR 1) near the end of the body distal from the soil (12, 13). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that it has an annular shaped skirt around the body near the end of the body distal from the soil in view of Woodruff in order to provide means for protecting the integrity of the bait material therein, prevent tampering but unauthorized individuals, and for reducing the effect of above ground elements on the bait material.

In regard to claims 2, 4, 50, Burgess discloses a body housing (1, 2) with an outer wall comprising an opening (defined by 11) and a body core (12) comprising a passage (slot in 12) which extends across the width of the outer housing and a front face of the which overlapping the opening (slot of 12 overlaps opening defined in 11), but does not disclose the body core comprising a radial passage. Woodruff discloses a body (1, 10) comprising a radial passage (2, 8). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it comprises a radial passage in view of Woodruff in order to accommodate the horizontal tunneling habits of

the organisms and to provide means for guiding the organisms directly to the bait element to facilitate and speed up detection for the user.

In regard to claim 54, Burgess and Woodruff disclose the barrier (7 of Woodruff) comprising perforations (8 of Woodruff).

In regard to claims 58 and 59, Burgess and Woodruff disclose the passage (8 of Woodruff) tapered from a wide end (outer end of 8 in Fig. 1 of Woodruff) distal from the bait material (10 of Woodruff) and a narrow end (inner end of 8 of Woodruff) proximate the bait material (10 of Woodruff), and wherein the sidewall is tapered linearly (see Fig. 1 of Woodruff).

13. Claims 5-9, 18, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Woodruff 5,901,496 as applied to claim 53 above, and further in view of Su 6,397,516.

In regard to claims 5 and 18, Burgess and Woodruff disclose a barrier (1 or 7) covering the entrance passage (8 or 2), but do not disclose the barrier member being formed of a sheet of consumable porous material. Su disclose the barrier member (casing on bait tube in Fig. 3 comprising appropriate openings or openings in station housing disposed over the bait tube with openings therein) covering the entrance passage (non-rigid matrix comprising cellulose containing materials) and being formed of a sheet of consumable porous material (comprising cardboard and other cellulose materials; see col. 11, lines 16-23 and having appropriate openings). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that there is a barrier covering the entrance passage and the barrier comprising a

consumable porous material in view of Su in order to provide means for maintaining the integrity of the bait and to further shield the bait material from degradation due to the decomposition that occurs in moist soil to thereby preserve the bait material so that it is primarily eaten and degraded by the organisms so that the user is reliably assured that the device detects weakening of the material due to the actions of the organisms and also to provide a barrier which can be consumed by the organisms so as to provide further attractive effects.

In regard to claim 9, see Fig. 1 of Woodruff.

Alternatively in regard to claim 54, Burgess and Woodruff does not disclose the barrier comprising perforations. Su discloses a barrier (casing on bait tube in Fig. 3 comprising appropriate openings) disposed between the outer wall (station housing in Fig. 2B) and the material (non-rigid matrix comprising cellulose containing materials), the barrier comprising perforations (casing comprising appropriate openings; see col. 11, lines 6-10) and being both porous (appropriate openings) and consumable by the organism (cardboard and other cellulose materials; see col. 11, lines 16-23). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that there is a barrier disposed between the outer wall and the material and the barrier comprising perforations and being porous in view of Su in order to provide means for maintaining the integrity of the bait and to further shield the bait material from degradation due to the decomposition that occurs in moist soil to thereby preserve the bait material so that it is primarily eaten and degraded by the organisms so that the user

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is reliably assured that the device detects weakening of the material due to the actions of the organisms.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ballard 6,187,328 discloses a bait station comprising a body (12) which is generally elongate in shape in a direction transverse to the direction in which the device is oriented in the soil (see Fig. 3 wherein long axis of body 13 is oriented perpendicular to the downward direction in which the body extends into the soil). Randon 5,832,658 discloses bait material comprising cardboard (B is corrugated paper).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/
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Art Unit 3643

DWA